S.B.Criminal Revision Petition No.1264/2007

Jagnandan Singh
v.
State of Rajasthan

Date of Order :: 28th November, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.S.Choudhary, for the petitioner.
Mr. Vishnu Kachhawaha, Public Prosecutor.

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This revision petition is preferred to challenge the order dated 4.10.2007 whereby learned Special Judge, Narcotic Drugs and Psychotropic Substances Act Cases, Sriganganagar rejecting the application preferred on behalf of the petitioner as per provisions of Section 91 Cr.P.C.

The contention of counsel for the petitioner that by order impugned a denial is made to supply the copies of the documents recorded under Section 161 Cr.P.C. during investigation and that is in violation of the law laid down by this Court in the case of Bhika Ram v. State of Rajasthan (1998 RCC 570) and Bheru Singh & Ors. v. State of Rajasthan (2003(2) RCC 909).

I have perused the order impugned and also heard counsel for the parties.

The petitioner by the application claimed to supply the copies of the statements recorded under Section 161 Cr.P.C. while making investigation. The denial to supply was made by the order impugned on the count that the prosecution was not relying on those statements.

This Court in the case of Bhika Ram (supra) while dealing with the same issue held that "it is conceivable that the one or more of these persons who were examined under Section 161, Cr.P.C. but who are not proposed to be cited as prosecution witnesses might be the persons acquainted with the facts and circumstances of the case and their statements may be relevant for the purpose of deciding the question whether the accused is guilty or is innocent. In such cases, if a material witness is with held by the prosecution a question may arise whether adverse inference should be drawn against the prosecution for withholding a material witness. The trial Court may, therefore, direct the prosecution to produce the copies of the statements of those persons who appear to be acquainted with the facts and circumstances of the case or, in other words, who appear to be the material witnesses but have not been cited as prosecution witnesses".

The same position was reiterated by this Court in the case of Bheru Singh (supra) in following terms:-

> "8.So far as supplying of copy of statement recorded under Section 161 Cr.P.C. is concerned, no doubt the police is bound to place before the Court all relevant evidence which enables the court to decide the matter and thus, as a rule the accused are entitled to copies of the statements recorded under Section 161 Cr.P.C. For that case of Devender Kaur Vs. State of Rajasthan of this Court reported in RLR 1990(2) 629 may be referred to.
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> 9.Not only this, the prosecution should also supply those statements recorded under section 161 Cr.P.C. on which they have not placed reliance, but have been demanded by the accused. For that case of Pradeep Kumar and ors. Vs. State of Rajasthan reported in 1994(3) Crimes 859 may be referred to. In other words, the accused are entitled to those statements recorded under Section 161 Cr.P.C. which have not been filed with the charge-sheet. It may further be mentioned here that recording statements under Section 161 Cr.P.C. and simply enquiring some facts from the witnesses are of two different nature."

In view of the law laid down by this Court in the cases of Bheru Singh and Bhika Ram (supra) it is quite clear that an accused is entitled to get copies of those statements recorded under Section 161 Cr.P.C.

may those have been filed with the charge sheet or not.

In view of whatever discussed above, this revision petition deserves acceptance, therefore, the same is allowed. The order dated 4.10.2007 passed by Special Judge, Narcotic Drugs and Psychotropic Substances Act Cases, Sriganganagar is quashed and the learned Special Judge is directed to consider the application preferred by the petitioner afresh in light of the law discussed above.

(GOVIND MATHUR),J.

Kkm/ps.